REMARKS

Presently, claims 25-39 are pending in the application. Independent claims 25, 30 and 35 have been amended to more particularly point out the present invention. Support for the features added to independent claims 25, 30 and 35 may be found, for example, at page 12, line 19 – page 13, line 18 of the specification. Accordingly, no new matter has been added to the application by the foregoing amendments.

Prior Art Rejection – § 102(b)

The Examiner has rejected claims 25-39 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,029,045 to Picco *et al.* ("Picco"). The Examiner contends that Picco teaches each and every element of the present invention. Applicants respectfully traverse this rejection.

Picco teaches a method and system for providing targeted content (including advertisements) to specified groups of viewers. In Picco, targeted or local content may be downloaded to a user (e.g., a set top box), stored, and subsequently inserted into live program streams at the appointed time. The local content is inserted into a corresponding program stream according to command and control data. Picco teaches that preferences about the subscribers may be gathered and analyzed to customize the content that is downloaded to a subscriber. The local content may include additional information associated with that piece of local content, including, for example, use statistics. Picco further teaches that data from households (including viewing time information and actual programming being viewed) may be collected to generate statistics about the collected data. That statistics may be used to select additional local content. Picco teaches several different methods for transmitting the desired content to the corresponding location, including trickle, nightly download and dual receiver techniques. The method of transmitting the local content may vary, depending on the available equipment and network, as well as the available bandwidth.

Applicants' invention inserts unscheduled advertisements into a television programming stream for presentation to a subscriber. In Applicants' invention the advertisements that are inserted into the program stream are not associated with a

particular advertisement space, time slot and/or program content. Rather, the

unscheduled ads are those that may or may not be inserted into a program stream,

depending on the availability of an advertisement space within that programming stream.

The unscheduled advertisements are stored, such that when an advertisement space for an

unscheduled ad becomes available, the unscheduled ad is ready for insertion.

Furthermore, once an unscheduled ad is inserted, Applicants' invention determines

whether the advertisements were actually presented to individual subscribers. The is

accomplished by monitoring the state (e.g., on, off) of the device through which the ad is

presented to the subscriber. Such a determination assists in establishing the value and

relevancy of the unscheduled advertisements to both advertisers and subscribers.

For a rejection under § 102(b) to be proper, a reference must disclose, either

explicitly or inherently, each and every element of the claimed invention. Applicants

respectfully submits that Picco does not teach each and every element recited in

independent claim 25.

Independent claim 25, as amended, recites:

> A method of inserting unscheduled advertisements into a television programming stream in a communications network, the method comprising:
>
> (a) selecting one or more unscheduled advertisements to be presented at a presentation device to one or more subscribers to the communications network;
>
> (b) storing the unscheduled advertisements at a node of the communications network;
>
> (c) detecting intervals in said programming stream within which advertisements may be inserted;
>
> (d) inserting the unscheduled advertisements into said programming stream within the detected intervals; and
>
> (e) monitoring the communications network to determine, based on the state of the presentation device, whether the selected unscheduled advertisements are presented to each of the one or more subscribers.

Picco does not disclose a method or system that monitors a "communications network to determine, based on the state of the presentation device, whether the selected unscheduled advertisements are presented to each of the one or more subscribers." Although Picco discloses that data is collected from the households that use the system, and that such data may include viewing time information, as well as which programs are being viewed, Picco does not disclose that the "state of the presentation device" is utilized to determine whether the unscheduled advertisement(s) were presented to the subscriber. Rather, Picco is silent with respect to how the statistical collector system gathers or determines the data that is subsequently input to the agent 150. In contrast, Applicants' invention uses the state of the presentation device to determine whether the subscriber was presented with the unscheduled advertisements. For example, Applicants' invention might detect whether the presentation device is "ON" to determine whether the ads were presented to the subscriber. Thus, Picco does not teach or suggest the features recited in independent claim 25. Accordingly, independent claim 25 is believed to be allowable over Picco.

Independent claim 30 recites "an advertisement selector, configured to select one or more unscheduled advertisements…; and a monitor processor configured to monitor the communications network to determine, based on the state of the presentation device, whether the selected unscheduled advertisements are presented to each of the one or more subscribers." Similarly, independent claim 35 recites "a computer-readable medium…for performing a method comprising…monitoring the communications network to determine, based on the state of the presentation device, whether the selected unscheduled advertisements are presented to each of the one or more subscribers." For the same reasons discussed above with respect to independent claim 25, Picco does not disclose all of the features recited in independent claims 30 and 35. Accordingly, independent claims 30 and 35 are believed to be allowable over Picco.

Dependent claims 26-29, 31-34 and 36-39 are allowable at least by their dependency on independent claims 25, 30 and 35, respectively. Reconsideration and withdrawal of the Examiner's §102(b) rejection of claims 25-39 are respectfully requested.

Conclusion

In view of the foregoing amendments and remarks, Applicants respectfully submit that the Examiner's rejection have been overcome, and that the application, including claims 25-39, is in condition for allowance. Reconsideration and withdrawal of the Examiner's rejection and an early Notice of Allowance are respectfully requested.

Respectfully submitted,

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